

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Adriaan Denbroeder	Team: Squad #16	CCRB Case #: 202104710	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 07/01/2021 12:49 PM, Wednesday, 08/04/2021 9:40 AM	Location of Incident: § 87(2)(b) Private Home	Precinct: 115	18 Mo. SOL 1/1/2023	EO SOL 1/1/2023	
Date/Time CV Reported Mon, 08/09/2021 5:44 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 08/09/2021 5:44 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DTS Cesar Arceo	03929	934414	115 PCT
2. POM Matthew Fox	00289	966064	115 PCT
3. PO Daniella Berge	06901	964391	115 PCT
4. PO Gabriel Abreu	09959	965917	115 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Philip Vanaarde	04756	970911	115 PCT
2. SGT Sean Keegan	01222	949157	115 PCT
3. POM Elijah Ali	12087	970382	115 PCT
4. POM Fouger Rene	19584	962722	115 PCT
5. PO David Rodriguez	06372	963722	SUM YOUTH
6. PO Michael Costa	20723	965012	115 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Matthew Fox	Abuse: On July 1, 2021, Police Officer Matthew Fox failed to obtain language interpretation services for § 87(2)(b) § 87(2)(b).	§ 87(2)(b)
B.PO Gabriel Abreu	Abuse: On July 1, 2021, Police Officer Gabriel Abreu failed to obtain language interpretation services for § 87(2)(b) § 87(2)(b).	§ 87(2)(b)
C.PO Daniella Berge	Abuse: On July 1, 2021, Police Officer Daniella Berge failed to obtain language interpretation services for § 87(2)(b) § 87(2)(b).	§ 87(2)(b)
D.POM Matthew Fox	Abuse: On July 1, 2021, Police Officer Matthew Fox entered the § 87(2)(b) apartment located in § 87(2)(b) in Queens.	§ 87(2)(b)
E.PO Gabriel Abreu	Abuse: On July 1, 2021, Police Officer Gabriel Abreu entered the § 87(2)(b) apartment located in § 87(2)(b) § 87(2)(b) in Queens.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
F.PO Daniella Berge	Abuse: On July 1, 2021, Police Officer Daniella Berge entered the § 87(2)(b) apartment located in § 87(2)(b) in Queens.	
G.POM Matthew Fox	Abuse: On July 1, 2021, Police Officer Matthew Fox searched the § 87(2)(b) apartment located in § 87(2)(b) in Queens.	
H.PO Gabriel Abreu	Abuse: On July 1, 2021, Police Officer Gabriel Abreu searched the § 87(2)(b) apartment located in § 87(2)(b) in Queens.	
I.PO Daniella Berge	Abuse: On July 1, 2021, Police Officer Daniella Berge searched the § 87(2)(b) apartment located in § 87(2)(b) in Queens.	
J.PO Daniella Berge	Abuse: On July 1, 2021, Police Officer Daniella Berge entered the basement of § 87(2)(b) in Queens.	
K.PO Gabriel Abreu	Abuse: On July 1, 2021, Police Officer Gabriel Abreu entered the basement of § 87(2)(b) in Queens.	
L.PO Daniella Berge	Abuse: On July 1, 2021, Police Officer Daniella Berge searched the basement of § 87(2)(b) in Queens.	
M.PO Gabriel Abreu	Abuse: On July 1, 2021, Police Officer Gabriel Abreu searched the basement of § 87(2)(b) in Queens.	
N.POM Matthew Fox	Abuse: On July 1, 2021, Police Officer Matthew Fox failed to provide § 87(2)(b) with a business card.	
O.PO Daniella Berge	Abuse: On July 1, 2021, Police Officer Daniella Berge failed to provide § 87(2)(b) with a business card.	
P.PO Gabriel Abreu	Abuse: On July 1, 2021, Police Officer Gabriel Abreu failed to provide § 87(2)(b) with a business card.	
Q.DTS Cesar Arceo	Force: On August 4, 2021, Detective Cesar Arceo used physical force against § 87(2)(b)	
R.DTS Cesar Arceo	Abuse: On August 4, 2021, Detective Cesar Arceo failed to obtain language interpretation services for § 87(2)(b)	
S.DTS Cesar Arceo	Abuse: On August 4, 2021, Detective Cesar Arceo failed to obtain language interpretation services for § 87(2)(b)	

Case Summary

On August 9, 2021, § 87(2)(b) filed this complaint in person at the CCRB.

On July 1, 2021, at 12:49pm, § 87(2)(b) called 911 and reported that there was a violation of an order of protection. DTS Cesar Arceo, PO Matthew Fox, PO Gabriel Abreu, and PO Daniella Berge responded to the location, § 87(2)(b) in Queens. Officers spoke with § 87(2)(b) who stated that the alleged perpetrator and landlord of the building, § 87(2)(b) was in the rear of the house. § 87(2)(b) § 87(2)(b)'s daughter-in-law, instructed officers not to enter and repeatedly asked for a Mandarin interpreter (**Allegations A-C: Abuse of Authority, § 87(2)(g)**). PO Fox, PO Berge, and PO Abreu then entered and searched the § 87(2)(b) apartment where § 87(2)(b) was (**Allegations D-I: Abuse of Authority, § 87(2)(g)**). The officers then left the apartment. PO Berge and PO Abreu entered the basement of the building (**Allegations J-M: Abuse of Authority, § 87(2)(g)**). The officers left and did not provide § 87(2)(b) with any documentation including RTKA cards (**Allegation N, O, P: Abuse of Authority, § 87(2)(g)**). Officers did not have any contact with § 87(2)(b)'s mother-in-law, § 87(2)(b) on this date.

On August 4, 2021, at 9:40am, officers responded to § 87(2)(b) in response to an allegation by § 87(2)(b) alleged that § 87(2)(b) had assaulted her. Sergeant Sean Keegan, DTS Arceo, PO Philip Vanaarde, PO Rene Fougier, PO Michael Robbins, PO Elijah Ali, PO Micheal Costa responded. DTS Arceo arrested § 87(2)(b). As DTS Arceo handcuffed § 87(2)(b) he grabbed her wrists (**Allegation Q: Force, § 87(2)(g)**). He then handcuffed § 87(2)(b) § 87(2)(b) and § 87(2)(b) notified officers that they spoke Mandarin Chinese and required an interpreter, but no interpreter was provided on scene (**Allegations R-S: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) was arrested for reckless endangerment, assault, and harassment. § 87(2)(b) was arrested for assault and harassment. § 87(2)(b) and § 87(2)(b) were removed to the 115th Precinct stationhouse; once there, they were provided with an interpreter via the Language Line.

The investigation obtained body-worn camera footage for the incidents on July 1, 2021, and August 4, 2021 (**BR 24**).

Findings and Recommendations

Allegation (A) Abuse of Authority: On July 1, 2021, Police Officer Matthew Fox failed to obtain language interpretation services for § 87(2)(b)

Allegation (B) Abuse of Authority: On July 1, 2021, Police Officer Gabriel Abreu failed to obtain language interpretation services for § 87(2)(b)

Allegation (C) Abuse of Authority: On July 1, 2021, Police Officer Daniella Berge failed to obtain language interpretation services for § 87(2)(b)

It is undisputed that § 87(2)(b) is a Mandarin Chinese speaker.

DTS Arceo stated (**BR 21**) that on July 1, 2021, officers responded to a report of a violation of an order of protection. After speaking with the 911 caller, who stated that her landlord, § 87(2)(b) § 87(2)(b) had hit her with a door, officers knocked on § 87(2)(b) apartment on the § 87(2)(b) § 87(2)(b) § 87(2)(b)'s daughter-in-law, answered the door. PO Berge, PO Fox, and PO Abreu spoke with § 87(2)(b) (b)

PO Fox stated in his interview (**BR 12**) that he would characterize § 87(2)(b)'s level of English proficiency as "limited English proficiency." PO Fox stated he was not focused on communicating with § 87(2)(b) because he was focused on the "exigent circumstances" of apprehending § 87(2)(b) (b)

PO Berge stated in her interview (**BR 18**) that at one point, § 87(2)(b) requested an interpreter. Officers did not provide § 87(2)(b) with an interpreter and went inside the apartment. PO Berge stated that § 87(2)(b) did not receive an interpreter because she was not a part of the investigation, was not the 911 caller, and was not under arrest; instead, she was a third party. PO Berge stated that she had previously been aware that § 87(2)(b) spoke Mandarin from her prior visits to the house.

PO Abreu stated in his CCRB interview (**BR 17**) that on previous occasions he had called an interpreter for individuals at the house in previous instances. PO Abreu stated that § 87(2)(b) did not communicate that she wanted an interpreter “directly to [him].” PO Abreu stated that he did not know or recall if § 87(2)(b) requested interpretation services from another member of service. PO Abreu felt like § 87(2)(b) was not a party involved, thus did not need to be apprised of the details. PO Abreu felt that an interpreter did not need to be called because looking for a perpetrator was a priority.

PO Fox’s Body Worn Camera shows (**BR 28**) PO Fox then approaches the § 87(2)(b)’s apartment door with his fellow officers, including PO Abreu and PO Berge, and speaks to § 87(2)(b). At timestamp 3:23 in the recording, § 87(2)(b) states, “Speak Mandarin?” At 4:31, PO Fox states, “She doesn’t speak any English?” At 5:30 minutes in the recording, § 87(2)(b) states that § 87(2)(b) was not inside the apartment. PO Fox says that he has to go into the apartment. § 87(2)(b) blocks PO Fox and says “No.” PO Fox says that he does not want to make the situation complicated and that he has to look around the apartment. At 6:30, § 87(2)(b) states, “Can you speak Mandarin or something?” PO Berge responds, “Not right now.” At 6:50, § 87(2)(b) states, “I want to speak Mandarin.” At 7:03, she states, “I want to understand.” At 7:16, she states, “I want to understand.” At 7:38 she states, “I don’t understand why you’re looking.” At 8:01, § 87(2)(b) states, “I want to understand” to which PO Fox responds, “There was an argument. Do you know what that is?” § 87(2)(b) then states, “I don’t speak English really good. I need Mandarin.”

Patrol Guide Procedure 212-90 (**BR 1**) denotes the guidelines for interacting with limited English Proficiency Persons (LEPs) when providing police services. The procedure does not provide specific interactions for which interpretation is required. Officers must first, when encountering an LEP, determine the primary language of the person. Officers can do so by accessing the Language Line, determining if a bilingual member of service is readily available to interpret, or request that the Operations Unit research the language that the individual speaks.

PO Abreu affirmed that he had previously called for language interpretation when interacting with residents in this apartment. § 87(2)(g)

§ 87(2)(b) BWC shows that she did make this request while he was present. PO Berge affirmed that § 87(2)(b) requested language interpretation but stated that this assistance was not obtained because she was not primarily involved with the complaint. However, BWC footage shows that officers had a conversation with § 87(2)(b) regarding the officers’ desire to enter the residence, including a request for permission to enter and an attempt to explain why they were there – all of which § 87(2)(b) said that she could not understand. While § 87(2)(b) was not the 911 caller nor the perpetrator of the alleged crime, the officers were having conversations which required § 87(2)(b)’s full understanding. Finally, PO Fox affirmed that he knew that § 87(2)(b) had limited English proficiency and his BWC captures § 87(2)(b) requesting an interpreter. While PO Fox stated that there were “exigent circumstances” that prevented him from obtaining interpretation services, the BWC shows that officers spoke with § 87(2)(b) for at least five minutes in an attempt to enter the residence, which belies the claim of exigency. Additionally, given the number of officers present on scene, any one of the officers could have started the process to obtain interpretation

services while other officers interacted with § 87(2)(b)

§ 87(2)(g)
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Allegation (D) Abuse of Authority: On July 1, 2021, Police Officer Matthew Fox entered the § 87(2)(b) apartment located in § 87(2)(b) in Queens.

Allegation (E) Abuse of Authority: On July 1, 2021, Police Officer Gabriel Abreu entered the § 87(2)(b) apartment located in § 87(2)(b) in Queens.

Allegation (F) Abuse of Authority: On July 1, 2021, Police Officer Daniella Berge entered the § 87(2)(b) apartment located in § 87(2)(b) in Queens.

Allegation (G) Abuse of Authority: On July 1, 2021, Police Officer Matthew Fox searched the § 87(2)(b) apartment located in § 87(2)(b) in Queens.

Allegation (H) Abuse of Authority: On July 1, 2021, Police Officer Gabriel Abreu searched § 87(2)(b) apartment located in § 87(2)(b) in Queens.

Allegation (I) Abuse of Authority: On July 1, 2021, Police Officer Daniella Berge searched the § 87(2)(b) apartment located in § 87(2)(b) in Queens.

Allegation (J) Abuse of Authority: On July 1, 2021, Police Officer Daniella Berge entered the basement of § 87(2)(b) in Queens.

Allegation (K) Abuse of Authority: On July 1, 2021, Police Officer Gabriel Abreu entered the basement of § 87(2)(b) in Queens.

Allegation (L) Abuse of Authority: On July 1, 2021, Police Officer Daniella Berge searched the basement of § 87(2)(b) in Queens.

Allegation (M) Abuse of Authority: On July 1, 2021, Police Officer Gabriel Abreu searched the basement of § 87(2)(b) in Queens.

It is undisputed that on July 1, 2021, four members of service, DTS Cesar Arceo, PO Daniella Berge, PO Matthew Fox, and PO Gabriel Abreu responded to § 87(2)(b) in Queens, a two-story home.

§ 87(2)(b) § 87(2)(b) stated in her interview (BR 22) that she was a landlord at § 87(2)(b) where she resided. She stated that she lived in an apartment § 87(2)(b) § 87(2)(b) was a tenant who lived in an apartment in the § 87(2)(b)

§ 87(2)(b) § 87(2)(b)'s daughter-in-law, provided a statement to the CCRB (BR 23). § 87(2)(b) lives with § 87(2)(b) in the § 87(2)(b) apartment. On July 1, 2021, at approximately 12:00pm, § 87(2)(b) opened the door to the § 87(2)(b) apartment and saw approximately two officers. One officer asked if § 87(2)(b) was home. § 87(2)(b) responded that § 87(2)(b) was not. No officers asked to go inside the apartment. After § 87(2)(b) expressed that there was no one inside the apartment, § 87(2)(b) physically blocked the hallway, however the officers went inside anyways. § 87(2)(b) blocked the door by standing in the hallway. § 87(2)(b) did not agree to let the officers into the apartment. An officer reached out to § 87(2)(b) gently and indicated for her to stand aside. One officer used their right hand to indicate that she should move to the right side. § 87(2)(b) tried to block the officers, but they went inside to look for § 87(2)(b)

DTS Arceo stated in his interview (**BR 21**) that he received a call regarding an order of protection violation on July 1, 2021, at 12:51pm at § 87(2)(b). Prior to this date, DTS Arceo had not been to the location of the call. Prior to arriving at the location, DTS Arceo did not learn of any information regarding weapons or injuries. DTS Arceo and PO Fox arrived at the location and met the complainant, § 87(2)(b) at the scene. § 87(2)(b) opened the main door of the home, and the officers went inside the hallway of the building. § 87(2)(b)'s room was directly to the left upon entering the building. PO Berge, PO Fox, and PO Abreu were also present.

DTS Arceo stated (**BR 21**) that he learned from § 87(2)(b) that there was an ongoing rent issue between § 87(2)(b) and her landlords, § 87(2)(b) and § 87(2)(b). § 87(2)(b) stated that she had injuries on her arm and leg due to an incident earlier that day during which she was standing behind a door when § 87(2)(b) forcefully tried to try to enter the apartment, damaging the door frame, and causing those injuries. Officers then asked § 87(2)(b) where § 87(2)(b) and § 87(2)(b)'s apartment was, and § 87(2)(b) pointed to a door § 87(2)(b). The officers asked § 87(2)(b) if § 87(2)(b) was still there, and she responded affirmatively. § 87(2)(b)'s apartment was to the right of DTS Arceo. PO Berge, PO Fox, and PO Abreu knocked on the door and rang the bell to the apartment. DTS Arceo stated that PO Fox, PO Berge, and PO Abreu then spoke with a female who opened the door – identified by the investigation as § 87(2)(b) – while he spoke with § 87(2)(b). The officers were looking for § 87(2)(b) to place her under arrest for assaulting § 87(2)(b). If she was on scene, § 87(2)(b) would have been arrested for assault in the third degree and reckless endangerment due to § 87(2)(b) kicking the door, causing injury to § 87(2)(b). DTS Arceo stated in his CCRB interview that he did not know if any officers forcefully entered the apartment, however he believed that officers entered the apartment.

PO Abreu stated in his interview (**BR 17**) that beyond the allegation that § 87(2)(b) hit § 87(2)(b) with a door, PO Abreu did not think any other crimes had been committed. PO Abreu heard § 87(2)(b) state during the officers' conversation, "She's in there," in reference to § 87(2)(b) pointing towards the § 87(2)(b)'s apartment door. At the § 87(2)(b)'s apartment door, officers asked for § 87(2)(b). § 87(2)(b) answered and stated that § 87(2)(b) was not present.

PO Abreu stated (**BR 17**) that he, PO Fox, and PO Berge entered the apartment. DTS Arceo remained in the small hallway with § 87(2)(b). PO Abreu stated that no officer asked permission to enter the apartment, and he did not ask for permission himself. PO Abreu stated that § 87(2)(b) was not informed that she could refuse entry. PO Abreu stated that because there was probable cause to enter due to a crime being committed and § 87(2)(b) stating that she saw § 87(2)(b) go into her apartment, therefore § 87(2)(b) could not have refused entry to officers. There was a locked door inside the apartment that officers knocked on but did not enter because they did not make any voice contact with any individuals inside the room. After going inside the apartment, PO Abreu and PO Berge then looked inside the basement to see if anyone was there. PO Abreu did not remember § 87(2)(b) saying anything about the basement. The basement could be accessed from the first-floor hallway via an unlocked door to the right of the hallway. The basement was an open room. The officers did not ultimately find § 87(2)(b).

PO Fox stated in his interview (**BR 12**) that he entered the apartment due to "exigent circumstances due to a fleeing suspect." For this reason, he stated, he was not required to ask permission to enter the apartment.

PO Berge stated (**BR 18**) that she entered the § 87(2)(b) apartment. PO Berge did not recall if any officers requested permission to enter the apartment because officers had probable cause and were looking for a suspect. PO Berge did not recall if § 87(2)(b) ever stated that the officers could

not enter the apartment. PO Berge stated that § 87(2)(b) could refuse entry as a tenant of the apartment, but since there was a suspect inside the apartment, officers could enter. PO Berge believed that § 87(2)(b) due to § 87(2)(b)'s statements. After entering the apartment, they did not find § 87(2)(b). PO Berge entered the basement of the house by exiting the apartment, turning left, and opening a closed door, which was not connected to the apartment to "make sure" that § 87(2)(b) was not downstairs.

PO Fox's Body Worn Camera (BR 28) shows that at 2:15 minutes in the recording, he asks § 87(2)(b) where § 87(2)(b) went. § 87(2)(b) points towards a door and says, "She went back there." PO Fox then approaches the § 87(2)(b)'s apartment door with his fellow officers and speaks to § 87(2)(b). He asks § 87(2)(b) if he can go into the apartment. At 5:30, PO Fox enters the apartment. At 5:53, PO Fox asks to go further inside the apartment. At 6:06, § 87(2)(b) says, "No, no." At 6:30, PO Fox tries to push past § 87(2)(b). At 6:26, PO Fox tries to move a chair to walk past § 87(2)(b). PO Berge and PO Abreu follow. PO Fox then proceeds into the common space and one bedroom.

PO Fox's Body Worn Camera (BR 28) shows that PO Berge, PO Abreu, and himself entered the apartment. PO Berge's BWC shows that (BR42) at timestamp 8:25 she and PO Abreu entered the basement of § 87(2)(b) opening a door to the left of the § 87(2)(b) apartment.

The event chronology for the incident shows (BR 14) that at 12:48pm, officers responded to a 10-39, a crime in progress. This crime in progress was specified as a violation of an order of protection. The event chronology, at 12:50pm notes that there are no weapons or injuries. At 1:12pm, the chronology reads that Unit 115D2, comprised of PO Fox and DTS Arceo, confirmed that there were no weapons or injuries.

PO Fox completed an AIDED report (BR 7). The narrative notes that § 87(2)(b) had alleged that § 87(2)(b) struck her with a door.

PO Fox's memo book (BR 10) notes that he responded to a 10-39V2 at 12:49pm, a crime in progress, violation of an order of protection outside. He closed the job at 12:51pm, editing the entry at 1:38am with a final disposition of 10-93C, a crime report prepared without arrest, 10-93Q, other report prepared, and 10-97R, patient refused medical treatment.

Patrol Guide Procedure 208-01 (BR 27), the law of arrest, notes that any officer may arrest a person or persons without a warrant "for an offense when [there is] reasonable cause to believe offense committed in his presence, or for a crime (within [their] presence or not) and reasonable cause exists that [the] arrested person committed the crime."

In *People v. Knapp*, 52 N.Y.2d 689 (BR 43), the court defined exigent circumstances as a situation in which probable cause exists, however there is no time for a warrant to be obtained. The court ruled, "The 'exigent circumstances' doctrine, which allows for broader application of much of the logic which permeates the search-incident-to-arrest exception, is said to exist whenever, though there is probable cause to search, urgent events make it impossible to obtain a warrant in sufficient time to preserve 'evidence or contraband threatened with removal or destruction.'"

In *People v. Hunter*, 92 A.D.3d 1277 (BR 26), the court ruled that, "under the doctrine of hot pursuit, a suspect may not defeat an arrest which has been set in motion in a public place." In *People v. Hunter*, police saw an individual who matched the description of a subject the officers were looking for. The subject then ran into a multi-unit apartment building. After losing sight of the subject, officers proceeded to search every apartment in the building before finding the subject. The court ruled further that the pursuit of the subject was not "hot pursuit," as "there was no

immediate or continuous pursuit of the [defendant] from the scene of the crime.” In the case of *People v. Hunter*, officers failed to establish any exigent or emergency circumstances that would have permitted them to enter locations without a warrant.

In this case, the officers spoke to the victim of the crime, § 87(2)(b) directly, satisfying the conditions for the law of arrest described in Patrol Guide Procedure 208-01 (BR 27). However, none of the officers stated that they had a search warrant for the location or an arrest warrant for § 87(2)(b). In the absence of a warrant, officers are permitted to enter if they satisfy the standard for exceptions to the search warrant requirement. Exceptions include consent or exigent circumstances, or hot pursuit, which is a subsection of the exigency exception. Although the BWC shows that PO Fox asked § 87(2)(b) if the officers could enter the § 87(2)(b) apartment, § 87(2)(b) said that they could not.

PO Fox stated in his CCRB interview that he entered the § 87(2)(b) apartment due to “exigent circumstances of a fleeing suspect.” The conditions outlined in *People v. Knapp*, 52 N.Y.2d 689 govern the exigent circumstances exception to the search warrant requirement, noting that exigent circumstances allow a warrantless entry and search if, and only if, there is not ample time to obtain a warrant. Although the officers spoke directly to the alleged victim of the crime, the officers did not show that there were any time-sensitive considerations in locating § 87(2)(b). While PO Fox referenced exigency connected with a “fleeing suspect,” he also testified that his sole basis for believing that § 87(2)(b) was inside the residence was a statement from § 87(2)(b) indicating that she was inside the § 87(2)(b) apartment. § 87(2)(g)

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PO Berge and PO Abreu both stated in their interviews (BR 17 and BR 18) that § 87(2)(b) indicated to them that § 87(2)(b) was inside the apartment in the rear of the building. As according to PO Berge, the basement was not connected to the apartment. § 87(2)(g)

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Allegation (N) Abuse of Authority: On July 1, 2021, Police Officer Matthew Fox failed to provide § 87(2)(b) with a business card.

Allegation (O) Abuse of Authority: On July 1, 2021, Police Officer Daniella Berge failed to provide § 87(2)(b) with a business card.

Allegation (P) Abuse of Authority: On July 1, 2021, Police Officer Gabriel Abreu failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) stated in her interview (BR 23) that she did not receive any documentation from officers on July 1, 2021.

PO Berge stated in her interview (BR 18) that § 87(2)(b) was not issued any business cards over the course of the incident because she was not stopped and she did not request one. She was not issued

any documentation from PO Berge and did not know if officers presented her with any documentation. PO Abreu stated in his interview (BR 17) that § 87(2)(b) was not issued any business cards over the course of the incident. § 87(2)(b) did not ask for one and no one took an “enforcement action” against her. PO Abreu did not feel it was a situation in which officers needed to issue one. PO Fox stated in his interview (BR 12) that he did not provide her with a business card because he did not have to, because there § 87(2)(b) was not stopped and she did not ask for one.

Administrative Guide Procedure 304-11 (BR 29) that when officers engage in searches of property, they must explain the reason for law enforcement activities and subsequently provide a Right to Know Business Card upon the conclusion of such activities. This provision is required especially if civilians do not receive alternative documentation, for example, in the form of summonses.

§ 87(2)(g)

Allegation (Q) Force: On August 4, 2021, Detective Cesar Arceo used physical force against

§ 87(2)(b)

It is undisputed that officers made physical contact with § 87(2)(b) on August 4, 2021.

§ 87(2)(b) stated in her CCRB interview (BR 22) that on August 4, 2021, she noticed officers outside her door talking to § 87(2)(b). § 87(2)(b) then saw § 87(2)(b) being arrested. An officer grabbed § 87(2)(b)'s hand. § 87(2)(b) informed the officers that she had two small babies to take care of at home and that she did not do anything wrong. An officer grabbed § 87(2)(b)'s wrist in such a way that it turned red. § 87(2)(b) stated to the officers that the grabbing of her wrist. § 87(2)(b) informed officers in English that she felt pain and asked them to be gentler with her wrist. Officers then handcuffed her.

§ 87(2)(b) stated in his interview (BR 32) that officers handled § 87(2)(b)'s arms in a rough manner by holding her arms.

DTS Arceo's Body Worn Camera footage shows (BR 37) that at 3:05 minutes in the recording, he uses one hand to grasp § 87(2)(b)'s right wrist and another to hold § 87(2)(b)'s upper arm. He then moves her wrist towards the small of her back. Once her hand is behind her back, PO Vanaarde places the right hand in handcuffs. The officers move her right arm upwards behind her back. PO Vanaarde then pulls § 87(2)(b)'s left hand behind her back. During this process, DTS Arceo and PO Vanaarde instruct § 87(2)(b) to stop resisting. § 87(2)(b) shakes her upper body from side to side.

DTS Arceo stated in his interview (BR 21) that on August 4, 2021, DTS Arceo responded to a 911 call regarding an assault in progress at § 87(2)(b) during which the complainant alleged that a male landlord had assaulted a tenant. As he arrived, he saw a male, identified by the investigation as § 87(2)(b). DTS Arceo stated that § 87(2)(b) the tenant, then came outside and stated that § 87(2)(b) was the person who assaulted her. At that point, DTS Arceo placed § 87(2)(b) under arrest. DTS Arceo then handcuffed § 87(2)(b) in front of the house. DTS Arceo asked § 87(2)(b) if the female standing next to her was the alleged perpetrator from the incident on July 1, 2021. DTS Arceo asked § 87(2)(b) if the alleged perpetrator, § 87(2)(b) had not been arrested regarding that incident. § 87(2)(b) expressed that § 87(2)(b) had been harassing her for rent money and that § 87(2)(b) punched her in the face. DTS Arceo spoke with § 87(2)(b) in the lobby near her room. DTS Arceo did not go into the § 87(2)(b) apartment in the rear of the building. Besides speaking to § 87(2)(b), DTS Arceo did not take any further investigative steps and arrested § 87(2)(b). DTS Arceo stated in his interview tried to handcuff § 87(2)(b) and place her under arrest. DTS Arceo

instructed § 87(2)(b) to stop resisting. § 87(2)(b) reviews to give her arm to officers because she was on the phone. DTS Arceo then repeated, “Stop resisting.” DTS Arceo tried to place her in handcuffs and § 87(2)(b) did not want to place her arms behind her back. He stated that he used the “least amount of force” to place § 87(2)(b) in handcuffs.

DTS Arceo prepared arrest reports for § 87(2)(b) and § 87(2)(b) (BR 2, 3).

Patrol Guide Procedure 221-01 (BR 30) outlines the NYPD Force Guidelines. The procedure goes on to state that officers may use force when “it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances.” The factors for determining whether a use of force is reasonable include, but are not limited to, “actions taken by the subject” and the “duration of action,” “subject’s violent history,” and “whether the subject is actively resisting custody.”

Although it is undisputed that officers made physical contact with § 87(2)(b) DTS Arceo’s actions of grabbing § 87(2)(b) s wrists, as well as assisting in placing her in handcuffs, Patrol Guide Procedure 221-01 permits officers to use force for the purpose of placing a person into custody. DTS Arceo’s Body Worn Camera is consistent with his testimony that his physical contact was limited to moving § 87(2)(b) s hands behind her back so that they could be placed into handcuffs. Additionally, officers had prior knowledge of § 87(2)(b) s alleged violent conduct from the incident on July 1, 2022, and the BWC footage shows that § 87(2)(b) shook her body in response to officers trying to handcuff her. Officers do not have any further physical interaction with § 87(2)(b) following him placing her in handcuffs with PO Vanaarde. § 87(2)(g)

Allegation (R) Abuse of Authority: On August 4, 2021, Detective Cesar Arceo failed to obtain language interpretation services for § 87(2)(b)

Allegation (S) Abuse of Authority: On August 4, 2021, Detective Cesar Arceo failed to obtain language interpretation services for § 87(2)(b)

§ 87(2)(b) stated in her CCRB interview (BR 22) that she informed officers as she was outside her home that she needed a Mandarin interpreter. § 87(2)(b) feared that § 87(2)(b) was supplying officers with false information. § 87(2)(b) stated that she wished to tell her side of the story. § 87(2)(b) stated that upon arriving at the 115th Precinct stationhouse after being arrested, she was provided with interpretation services. § 87(2)(b) stated in his CCRB interview (BR 32) that while he was being arrested, he stated, “I need Mandarin.” He stated that upon arriving to the stationhouse, he was provided with an interpreter.

DTS Arceo stated that after he placed § 87(2)(b) in handcuffs, she stated “Chinese, Chinese, Chinese.” At that time, DTS Arceo considered § 87(2)(b) to be under arrest and § 87(2)(b) was placed into DTS Arceo’s police vehicle. DTS Arceo was not sure if she said anything prior to being handcuffed. DTS Arceo stated in his CCRB statement (BR 21) that § 87(2)(b) and § 87(2)(b) were then transported back to the 115th Precinct stationhouse. DTS Arceo did not know who transported § 87(2)(b) and § 87(2)(b) were provided with Language Line access at the stationhouse to ascertain if they needed any medical attention or any psychological assistance. DTS Arceo stated that he did not provide interpretation services on site due to the amount of interaction that was occurring between the parties, because § 87(2)(b) was under arrest, and because DTS Arceo wanted to be able to read the civilians their rights.

At 3:15 minutes into DTS Arceo’s Body Worn Camera (BR 37), § 87(2)(b) states to DTS Arceo,

- Police Officer Fox has been a member of service for four years and has been a subject in one other CCRB complaint and one allegation, none of which were substantiated. § 87(2)(g)
- Police Officer Abreu has been a member of service for four years and has been a subject in two other CCRB complaints.
 - § 87(2)(g)
- DTS Arceo has been a member of service for 18 and has been a subject in six CCRB complaints and 15 allegations, of which one was substantiated.:
 - § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of November 23, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (BR 19, 41).
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)

Squad: 16

Investigator:	<u>Adriaan Denbroeder</u>	<u>Inv. Denbroeder</u>	<u>12/9/22</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Carlmais Johnson</u>	<u>IM Carlmais Johnson</u>	<u>December 9, 2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date